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HAROLD B. WILLEY, C

Supreme Court of the United States

OCTOBER TERM, 1954

No. 450

WALKER DALE BOSTON BATES,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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HAYDEN C. COVINGTON
124 Columbia Heights
Brooklyn 1, New York
Counsel for Petitioner

INDEX

Subject Index

	PAGE
Opinion below	2
Jurisdiction	2
Questions presented and how raised	2
Statutes and regulations involved	3
Statement of the case	6
Facts disclosed by the evidence	6
Reasons for granting the writ	11
Conclusion	16
Appendix A—Opinion of the court below	17
Appendix B—Judgment of the court below	25

Cases Cited

Clementino v. United States 9th Cir., No. 13,819, Sept. 27, 1954, — F. 2d —	11
Cox v. Wedemeyer 9th Cir., 1951, 192 F. 2d 920	11, 13
Dickinson v. United States 346 U. S. 389 (1953)	12
Franks v. United States 9th Cir., No. 14,114, Oct. 4, 1954, — F. 2d —	11
Gonzales v. United States No. 69, Oct. Term, 1954 (6th Cir., 213 F. 2d 71)	12, 13
Jewell v. United States 6th Cir., 1953, 208 F. 2d 770	11
Pine v. United States 4th Cir., 1954, 212 F. 2d 93	11, 12, 13
Reel v. Badt 2d Cir., 1944, 141 F. 2d 845	12
Sicurella v. United States No. 250, Oct. Term, 1954 (7th Cir., 213 F. 2d 911)	12, 13

PAGE

Simmons v. United States
No. 251, Oct. Term, 1954 (7th Cir., 213 F. 2d 901) 13
Sterrett v. United States
9th Cir., No. 13901, Oct. 25, 1954, — F. 2d — 12
United States v. Berquist
D. Oregon, Portland Div., No. C-17,706, Sept. 14, 1954 14
United States v. Bloom
D. Oregon, Portland Div., No C-17,707, Sept. 14, 1954 14
United States v. Hagaman
3rd Cir., 1954, 213 F. 2d 86 ..... 12, 14, 15
United States v. Kezmes
W. D. Pa., No. 14012 Crim., Oct. 22, 1954 14
United States v. Wilson
7th Cir., July 15, 1954, 215 F. 2d 443 11
Weaver v. United States
8th Cir., 1954, 210 F. 2d 815 ..... 11, 12
Witmer v. United States
No. 164, Oct. Term, 1954 (3rd Cir., 213 F. 2d 95) 12, 13

STATUTES AND REGULATIONS CITED

Regulations, Selective Service (32 C. F. R. § 1602, *et seq.*)—Section—
1622.14 5
1626.24(b) 5
1626.26(a) 6
Rules of Criminal Procedure, Rules 37(b)(2) and 45(a) 2
United States Code, Title 18, Section 3231 2
United States Code, Title 28, Section 1254(1) 2
United States Code, Title 50 Appendix, Section 456(j) 3

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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, affirming the judgment of the United States District Court for the Eastern District of Arkansas, convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported. It appears as APPENDIX A to this petition. An opinion was delivered by the district court. It is quoted in the opinion below.—See APPENDIX A.

JURISDICTION

The judgment of the Court of Appeals was entered on October 19, 1954. (See APPENDIX B to this petition.) The time for filing this petition for writ of certiorari expires on November 18, 1954. This petition for writ of certiorari is filed within time. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure. Title 18, Section 3231, United States Code, confers jurisdiction on the trial court.

QUESTIONS PRESENTED AND HOW RAISED

I.

The local board classified petitioner as a conscientious objector and petitioner was placed in Class I-O. This classified him as opposed to both combatant and noncombatant participation in the armed forces. The Oregon district appeal board also found that petitioner was a conscientious objector. The state director of Oregon took an appeal from this classification. He stated that it was his opinion that petitioner was not a conscientious objector. The National Selective Service Appeal Board, on appeal by the director to the President, classified petitioner in Class I-A.

The question presented here, therefore, is whether the claim for classification as a conscientious objector was denied by the National Selective Service Appeal Board without basis in fact, consequently making the final classification of I-A arbitrary and capricious.

II.

The court below adopted the opinion of the trial court, holding that petitioner abandoned his conscientious objector claim when he appealed for a minister's classification and stated his opposition to the performance of civilian work. The court below also speculated on several different grounds that may have been relied upon by the National Selective Service Appeal Board to deny the conscientious objector claim in face of the holdings of the local board and the Oregon state district appeal board that petitioner was a conscientious objector.

The question presented, therefore, is whether an appeal for a minister's classification and a statement of opposition to civilian work constitute an abandonment of the conscientious objector claim and whether the court below may speculate as to the possible grounds for the denial of the conscientious objector status, in the absence of an opinion by the National Selective Service Appeal Board stating the basis for its decision.

STATUTES AND REGULATIONS INVOLVED

Section 6(j) of the act (50 U. S. C. App. (Supp. V) §456(j), 65 Stat. 75, 83, 86) provides:

"*Conscientious objectors.*—Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sus-

tained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board

may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."—50 U. S. C. App. (Supp. V) § 456(j), 65 Stat. 75, 83, 86.

Section 1622.14(a) of the Selective Service Regulations (32 C. F. R. § 1622.14(a) (E. O. 10420, Dec. 17, 1952)) provides:

"*Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.*—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces."

Section 1626.24(b) of the Selective Service Regulations (32 C. F. R. § 1626.24(b) (1951 Rev.)) provides:

"*Review by appeal board.*—. . . . (b) In reviewing the appeal, the appeal board shall not receive or consider any information which is not contained in the record received from the local board except (1) the advisory recommendation from the Department of Justice under section 1626.25,

and (2) general information concerning economic, industrial, and social conditions."

Section 1626.26(a) of the Selective Service Regulations (32 C. F. R. § 1626.26(a) (1951 Rev.)) provides:

"*Decision of Appeal Board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability."

STATEMENT OF THE CASE

Petitioner was charged by indictment in the District Court with failure to submit to induction into the armed forces of the United States. [R. 1-2] In the trial court and in the Court of Appeals he contended that the denial of the conscientious objector status was without basis in fact. [R. 2-3] The trial court found that there was basis in fact for the denial of the conscientious objector status. [R. 2-3, 9-12, 14] Petitioner was convicted. [R. 1, 3, 9-12] He appealed his case to the Court of Appeals. [R. 4] The Court of Appeals affirmed the conviction. [R. 117-124]

Facts Disclosed by the Evidence

Petitioner was born at Big Fork, Arkansas, on August 1, 1928. [R. 22] He registered with Local Board No. 14, Douglas County, at Roseburg, Oregon, September 15, 1948. [R. 19] A classification questionnaire was mailed to him on September 28, 1948. [R. 19, 20] He filled out the classification questionnaire. He did not claim to be a minister. [R. 21] He signed Series XIV showing that he was a conscientious objector. [R. 22-23]

The local board mailed to him a conscientious objector

form on October 4, 1948. [R. 23] He filled out this form and returned it to the local board. He showed that he was opposed to participation in combatant and noncombatant military training and service. [R. 28] He answered that he believed in the Supreme Being. [R. 29] He showed that his objections came from a belief in God that was superior to obligations arising from any human relation. [R. 29] He showed that he got his training as one of Jehovah's Witnesses from his parents. He was reared in the belief. He showed that he attended Bible studies. He answered that he had taken part in preaching from door to door. He relied on this activity as a conspicuous demonstration of the depth of his convictions. [R. 29] He gave a list of the schools that he had attended and his employment. [R. 29-30] He listed his places of residence. [R. 30] He gave the names of his father and mother and stated that both of them were Jehovah's Witnesses. [R. 30]

Petitioner stated that he was a member of Jehovah's Witnesses. [R. 30] He showed that the Watchtower Bible and Tract Society was the legal governing body of the group. He answered that he had been reared as one of Jehovah's Witnesses. He gave a list of references. [R. 32] Petitioner also filed a separate statement accompanying the conscientious objector form. He there stated that "we must obey God's law rather than man's." [R. 32]

On February 21, 1949, the local board requested information about petitioner's dependents. [R. 33-34] The local board deferred him from liability for service because of dependency. This was March 21, 1949. [R. 23] On December 15, 1950, the local board sent a new form requesting current information on his dependency. [R. 24] Bates filled this out and returned it to the local board. [R. 34-35]

The local board, on January 3, 1951, classified Bates as a conscientious objector in IV-E. [R. 24] This classification exempted him from combatant and noncombatant military service. [R. 24] The local board changed his

classification on November 27, 1951. He was placed in Class I-A-O. This made him liable for noncombatant military service. [R. 24] Bates requested a personal appearance. He complained in the letter of the classification. He stated that he was entitled to the I-O classification. This is a classification that would exempt him from combatant and noncombatant training and service as a conscientious objector. [R. 35-36] The local board notified him to appear for a hearing on January 16, 1952. [R. 36]

Bates filed with the local board a number of supporting affidavits. Virginia Nichols certified that he was sincere. [R. 37] Robert E. Aggson corroborated his claim for classification as a conscientious objector. [R. 37-38] Gerald Smith vouched for Bates' sincerity. He stated that Bates was opposed to combatant and noncombatant military training and service. [R. 38-39] Charles I. Mather, as presiding minister, stated that Bates was conscientiously opposed to combatant and noncombatant training and service. [R. 39]

The local board made a memorandum of the personal appearance of Bates. The clerk certified that Bates "was questioned by Dr. Roach and later given his desired classification of I-O." [R. 40] Bates was classified as a full conscientious objector by the local board on January 16, 1952. [R. 24] On March 4, 1952, the board mailed Bates a new form. This was filled out and returned on March 14, 1952. [R. 24, 40-43]

On March 9, 1952, Bates wrote the local board from Opal, Arkansas, and stated that he quit working at the sawmill in Glendale, Oregon, because his back troubled him. He stated that he was now working for his father, farming 50 acres of land and herding 20 head of cattle. [R. 43]

Petitioner was ordered to take a physical examination. This was complied with. [R. 44-50] He was found to be physically acceptable. [R. 51-54] Steps were taken to get

Bates to accept civilian hospital work as a conscientious objector. [R. 55-60] Bates told the local board that he had been inside of a hospital "but twice in my life." He told the board that he would appreciate more information on the matter. [R. 60] The state director notified him that if he did not select some work of a civilian nature he would be assigned to do work without an agreement as to the type of work to be done. [R. 61]

On December 9, 1952, Bates wrote a letter to his local board showing that he had been preaching. [R. 63-64] He supported this with affidavits signed by Mary Lou Silius, M. E. Crowell, Pearl Twyman, Curtis Lane and W. A. Bates. [R. 64-70] These papers were forwarded by the local board to state headquarters of Selective Service. [R. 62] The state director, on December 18, 1952, appealed the case of Bates to the appeal board.

On December 21, 1952, A. W. Messick wrote the local board, certifying to the preaching activity of petitioner. [R. 73-74] Other similar letters were written by W. J. Osborn, G. W. Tarkinton and Mrs. Loys Thrueatt. [R. 74-77]

The draft board file was sent to the Oregon appeal board on January 5, 1953. [R. 77] The appeal board classified Bates as a conscientious objector opposed to both combatant and noncombatant military service. He was placed in Class I-O on January 8, 1953. [R. 25, 79] Bates complained that he had been improperly denied a ministerial classification. [R. 79-80] Bates again wrote the local board, stating that he wished to appeal to the President for a ministerial classification. [R. 25, 80]

The Oregon State Director requested the cover sheet for consideration of whether to appeal to the President. [R. 81-82] The case was forwarded to the National Selective Service Appeal Board. [R. 82-83] The National Appeal Board requested more information. The state director ordered the local board to get the new information and consider whether to reopen the case of Bates. [R. 84-85] The local board wrote for new information. [R. 85-86] Bates

answered, supplying the requested details. [R. 86-89] The local board reviewed the new information and determined not to reopen the case and reclassify Bates. [R. 89-90] The state headquarters then transmitted the file to the National Selective Service Appeal Board. The state director of Oregon in his letter of March 3, 1953, to General Hershey, certified that it was his belief Bates was not a conscientious objector. He said:

> "It is the considered opinion of the State Director that this registrant has failed to establish 'individual' beliefs in a relation to a Supreme Being which warrant classification in Class I-O. This registrant predicates his claims for this classification entirely on the statements and beliefs of others than himself further relying on the citation of certain, isolated and unrelated quotations from the Bible.
>
> "No evidence has been found in this file that indicates personal thinking and careful evaluation of any religious teachings which have actuated the registrant to claim relief from service on the basis of religious scruples." [R. 90-91]

The National Selective Service Appeal Board classified Bates in I-A. [R. 93-94] This classification denied the conscientious objector status as well as the minister's exemption. It made him liable for unlimited military training and service. [R. 93-94] The classification was made on May 15, 1953. [R. 93-94] Bates was ordered to take a new physical examination. [R. 94-99] Bates requested that his case be reopened and reconsidered. [R. 99-101, 102-104] He was ordered to report for induction. The local board, on June 18, 1953, commanded him to appear for induction on July 13, 1953. [R. 102-103] He requested a postponement of induction. [R. 103] His induction was transferred from Oregon to Arkansas. [R. 104-107] On July 6, 1953, he was ordered to report for induction at

Mena, Arkansas, on July 14, 1953. [R. 107] On July 13, 1953, Bates wrote the local board that he would be out of the state of Arkansas for two weeks and would not return until August 2nd. [R. 108] Bates reported for induction and on July 16, 1953, refused to submit to induction. [R. 109-111]

REASONS FOR GRANTING THE WRIT

I.

The holding of the court below, that the petitioner waived his conscientious objector claim because he appealed from it, objected to the performance of civilian work and claimed to be a minister of religion, is in direct conflict with *Cox* v. *Wedemeyer*, 9th Cir., 1951, 192 F. 2d 920; *Pine* v. *United States*, 4th Cir., 1954, 212 F. 2d 93; *Franks* v. *United States*, 9th Cir., No. 14,114, October 4, 1954, — F. 2d — ; and *Clementino* v. *United States*, 9th Cir., No. 13,819, Sept. 27, 1954, — F. 2d — .

II.

In other cases where the indisputable evidence showed that the registrant was a conscientious objector, as here, and the local board and the appeal board granted the conscientious objector classification but the National Selective Service Appeal Board classified the registrant I-A, it was held that such final classification was without basis in fact, arbitrary and capricious. This is the identical situation in this case. The local board classified Bates as a conscientious objector. So did the appeal board. The National Selective Service Appeal Board, without stating its reason, reversed the classification of the local board and the appeal board. The decision of the court below is in conflict with *Jewell* v. *United States*, 6th Cir., 1953, 208 F. 2d 770; *Weaver* v. *United States*, 8th Cir., 1954, 210 F. 2d 815; *United States* v. *Wilson*, 7th Cir., July 15, 1954, 215 F. 2d 443; and *Pine* v. *United States*, 4th Cir., 212 F. 2d 93,

where the factual situation is identical to the facts in this case. The conflict is irreconcilable.

III.

The holding of the court below, speculating on so-called basis in fact for the National Selective Service Board, is out of harmony and in conflict with the holding of this Court in *Dickinson* v. *United States,* 346 U. S. 389 (1953). This Court has held that speculative basis for denial of the registrant's claim for exemption did not constitute basis in fact. The holding of the Court below, approving the speculation for basis in fact, is in direct conflict with *Dickinson* v. *United States,* 346 U. S. 389 (1953); *Weaver* v. *United States,* 8th Cir., 1954, 210 F. 2d 815; and *Pine* v. *United States,* 4th Cir., 1954, 212 F. 2d 93.

IV.

When a local board and an appeal board have classified a registrant as a conscientious objector and there has been no investigation and recommendation by the Department of Justice, as in this case, (*Sterrett* v. *United States,* 9th Cir., No. 13901, October 25, 1954, — F. 2d —) it is the same as though there were a recommendation by the Department in favor of the petitioner. Then the I-A classification of the National Selective Service Appeal Board in this case is illegal because of its failure to express reasons for reversing the conscientious objector classification granted by both the local board and the appeal board. The affirmance of the conviction in this case is in conflict with *United States* v. *Hagaman,* 3rd Cir., 1954, 213 F. 2d 86; and *Reel* v. *Badt,* 2nd Cir., 1944, 141 F. 2d 845.

V.

This Court has heretofore granted certiorari, on October 14, 1954, in the cases of *Gonzales* v. *United States,* No. 69, Oct. Term, 1954; *Witmer* v. *United States,* No. 164, Oct. Term, 1954; *Sicurella* v. *United States,* No. 250, Oct. Term,

1954; and *Simmons* v. *United States,* No. 251, Oct. Term, 1954. Some of the issues involved in these cases are involved here. Since this Court has granted certiorari in those cases it should be granted in this one also.

No reason exists to defer consideration of this petition until after those cases are decided by this Court. The factual situation is entirely different here. Not one of those cases involves whether an appeal from the conscientious objector classification itself given by the local board constitutes a waiver of the claim for conscientious objector classification. (See *Cox* v. *Wedemeyer,* 9th Cir., 1951, 192 F. 2d 920, and *Pine* v. *United States,* 4th Cir., 1954, 212 F. 2d 93.) This is the basic question in this case. It will not be determined by this Court in the four cases in which this Court has granted certiorari, because none of those cases involves an appeal from the conscientious objector classification by the local board for the exempt classification of a minister, as does this case.

VI.

The questions here presented are substantial. They are of great public importance. The questions presented affect the enforcement of the Universal Military Training and Service Act throughout the United States. These questions have not been presented to and have not heretofore been determined by this Court. These questions will not be settled by the cases pending before this Court. The Court should, therefore, grant certiorari and set this case down for argument along with *Gonzales* v. *United States,* No. 69, October Term, 1954 (6th Cir., 213 F. 2d 71); *Witmer* v. *United States,* No. 164, October Term, 1954 (3rd Cir., 213 F. 2d 95); *Sicurella* v. *United States,* No. 250, October Term, 1954 (7th Cir., 213 F. 2d 911); and *Simmons* v. *United States,* No. 251, October Term, 1954 (7th Cir., 213 F. 2d 901).

The importance of these questions is demonstrated by recent holdings by the United States District Court of

Oregon, Portland division. In those cases the facts were identical to the facts in this case.

There the local board in each case, as the Oregon local board here, classified each defendant as a conscientious objector. The Oregon appeal board—the same appeal board involved in this case—also classified each registrant in Class I-O. In those cases, as in this case, the state director of Oregon took an appeal to the President because, as he stated in this case, he was of the opinion that each of Jehovah's Witnesses involved was not a conscientious objector.

In those cases the National Selective Service Appeal Board, as did the same appeal board in this case, classified each registrant in Class I-A. This made him liable for unlimited military training and service. (See *United States* v. *Hagaman*, 3rd Cir., 1954, 213 F. 2d 86, where the court held that the National Selective Service Appeal Board seemed to be of the opinion that none of Jehovah's Witnesses is entitled to be classified as a conscientious objector.) The United States District Court for the Western District of Pennsylvania, in *United States* v. *Kezmes*, No. 14012 Criminal, October 22, 1954, said:

> "I am forced to conclude that the National Board proceeded on the mistaken legal theory 'that as a matter of law Jehovah's Witnesses are not conscientious objectors.' *United States* v. *Hagaman*, 3 Cir., 213 F. 2d 86."

Twenty-four of the prosecutions in Oregon, identical in every respect to this one, were determined favorably to the defendants. District Judge McColloch rendered judgments of acquittal at Portland on September 14, 1954, in *United States* v. *Berquist*, D. Oregon, Portland Div., No. C-17,706, and *United States* v. *Bloom*, D. Oregon, Portland Div., No. C-17,707. Afterward, on the same day, the United States Attorney telephoned the Attorney General

in Washington, D. C., and got permission to dismiss twenty-two additional prosecutions.

The United States Attorney the next day, September 15, 1954, in making the motion in open court, explained to Judge McColloch that it was the opinion of the Department of Justice that the twenty-two additional cases should be dismissed. The District Judge granted the motion of the Government and dismissed the cases. The position that the Department of Justice has taken in this case is inconsistent with that taken in the above twenty-two cases identical to this case.

These twenty-four cases (where arbitrariness and capriciousness of the National Selective Service Appeal Board were the basis for dropping twenty-two prosecutions and the acquittal in two other cases) demonstrate the importance of the question presented here. They prove the unfair and illegal nation-wide policy set by the National Selective Service Appeal Board in innumerable other cases. They all involved conscientious objector claims appealed to it by Jehovah's Witnesses under the act from all parts of the United States.

There have been numerous acquittals and dismissals of prosecutions in other cases in different parts of the United States where the same determinations of the National Selective Service Appeal Board have been made in other cases involving Jehovah's Witnesses appealed from other states. It is apparent that the National Selective Service Appeal Board, as stated in *United States* v. *Hagaman,* 3rd Cir., 1954, 213 F. 2d 86, is taking the lawless and discriminatory view that none of Jehovah's Witnesses is entitled to the conscientious objector classification.

Where such illegal, arbitrary and capricious policy is adopted by the highest Selective Service Appeal Board, fixing the administrative policy throughout the country, it is apparent that the question presented here is of the widest and greatest public importance. The administration of the

law in this illegal manner by the National Selective Service Appeal Board has caused a waste of time and money in unnecessary and countless prosecutions. This has resulted in acquittals or required appeals to protect the rights of Jehovah's Witnesses against such illegal policy and wrongful prosecutions in many cases.

Much time and money have been wasted and trouble to prosecutors and defendants alike throughout the country has been caused and will continue to be produced by the illegal discriminatory policy of the National Selective Service Appeal Board against Jehovah's Witnesses, unless something is done about it by this Court to correct the matter. To this end, and for this reason alone, the petition for writ of certiorari in this case ought to be granted. Until this Court takes the time to correct the National Selective Service Appeal Board it will continue to ignore and defy decisions by district courts and courts of appeals throughout the country, as it has done continuously during the past four years, by denying the conscientious objector status to all Jehovah's Witnesses that appeal to it, thus continuing to overload the criminal docket of the lower federal courts throughout the country in cases identical to this.

CONCLUSION

WHEREFORE, for the reasons above stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

HAYDEN C. COVINGTON

124 Columbia Heights
Brooklyn 1, New York

Counsel for Petitioner

November, 1954.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 15,057.

Walker Dale Boston Bates, Appellant, vs. United States of America, Appellee.	Appeal from the United States District Court for the Eastern District of Arkansas.

[October 19, 1954.]

Hayden C. Covington for Appellant.

G. Thomas Eisele, Assistant United States Attorney (Osro Cobb, United States Attorney, was with him on the brief), for Appellee.

Before GARDNER, Chief Judge, and THOMAS and COLLET, Circuit Judges.

GARDNER, Chief Judge.

Appellant was indicted, tried and convicted on a charge of refusing to submit to induction into the armed forces of the United States. The case was tried to the court and a jury and at the close of the government's evidence appel-

lant, whom we shall refer to as defendant, moved for a judgment of acquittal on the grounds that:

(1) There is no evidence to show that defendant is guilty as charged in the indictment.

(2) The Government has wholly failed to prove the violation of the Act and Regulations by the defendant as charged in the indictment.

(3) The undisputed evidence shows that the defendant is not guilty as charged.

(4) The evidence shows that the classification of the defendant in class I-A was and is without basis in fact, and was and is arbitrary, capricious and contrary to law.

(5) The evidence fails to show that defendant was subject to induction into the armed forces of the United States under the Selective Service Act of 1948 and the regulations made pursuant thereto.

(6) The evidence shows that defendant was not subject to be drafted and inducted into the armed forces of the United States at the time and place charged in the indictment.

The motion was denied. It was renewed at the close of all the testimony and again denied. The case was sent to the jury and a verdict of guilty was returned based upon which defendant was sentenced to a term of imprisonment. From the judgment and sentence so entered he prosecutes this appeal.

At all times pertinent to the issues here involved defendant was of draft age and physically fit for induction into the armed forces of the United States. He was classified I-A. His contention is that this classification was arbitrary and capricious and that he was entitled to a classification of IV-D as a minister of religion. The controlling issue is whether defendant's classification as I-A finds basis in fact as reflected by the record.

The findings of the board need not have been sustained by substantial evidence nor such as would satisfy the reviewing court. Indeed, if made in conformity with the regulations they are final even though they may be erroneous. *Estep* v. *United States*, 327 U. S. 114; *Dickinson* v. *United States*, 346 U. S. 389; *Cox* v. *United States*, 332 U. S. 442; *Eagles* v. *United States ex rel. Samuels*, 329 U. S. 304; *Eagles* v. *United States ex rel. Horowitz*, 329 U. S. 317. In *Estep* v. *United States, supra*, in referring to the scope of review of orders of the local boards it is said:

"The provision making the decisions of the local boards 'final' means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous."

Section 1622.1, Selective Service Regulations, provides that every registrant is I-A "until his eligibility for deferment or exemption from military service is clearly established • • •" the burden of proving his eligibility to exemption from military service was therefore upon defendant. As said in *Dickinson* v. *United States, supra:*

"And since the ministerial exemption is a matter of legislative grace, the selective service registrant bears the burden of clearly establishing a right to the exemption."

Again it is said in *Dickinson* v. *United States, supra:*

"Local boards are not courts of law and are not bound by traditional rules of evidence; they are given great leeway in hearing and considering a variety of material as evidence. If the facts are disputed the board bears the ultimate responsibility for resolving the conflict—the courts will not interfere. Nor will the courts apply a test of 'substantial evidence.' However, the courts may properly in-

sist that there be some proof that is incompatible with the registrant's proof of exemption."

With these rules in mind we turn to a consideration of the facts and circumstances as they were disclosed to the board with a view of determining whether they may properly be held to constitute a basis in fact for the board's action. Even in the absence of direct evidence the board was entitled to consider all the evidence and circumstances presented and such inferences as might reasonably be drawn therefrom. The trial judge in the instant case very carefully considered the entire record and in a memorandum overruling defendant's motion for judgment of acquittal marshals the facts and circumstances in chronological sequence as follows:

"I have examined the defendant's file, which has been introduced in evidence and I am satisfied and find as a matter of law that there was basis in fact for the classification accorded him by the Presidential Appeal Board and I shall so instruct the jury. I now desire to make a brief statement for the record for the basis for my so finding. The file discloses that the defendant registered with Oregon Local Board 14 at Roseburg, Douglas County, Oregon on September 15, 1948, at a time when he was approximately 20 years of age. In his questionnaire he signed Series XIV consisting of a statement that by reason of religious training and belief, he was conscientiously opposed to participation in war in any form and requesting that he be supplied a special form for conscientious objectors, Selective Service Form No. 150, to be filled out by him and returned to the Local Board for further consideration. It is noted that he did not fill out any part of Series VI of the questionnaire which was to be filled out by every registrant who is a minister or a student preparing for the ministry. This questionnaire was filed with Local Board on October 3, 1948.

"On October 4, 1948 the Local Board mailed the defend-

ant the Special Form for conscientious objectors above referred to and said form was returned executed to the Board on October 11, 1948; in this form the defendant stated that he was conscientiously opposed to participation in war in any form by reason of his religious training and belief, and further, that he was conscientiously opposed to participation in noncombatant training or service in the Armed Forces. In answer to certain specific questions contained in said form, he undertook to set out the nature and basis of his alleged conscientious objection to military service of any kind; I shall have occasion to refer to some of his answers later on.

"It seems from the endorsements on the questionnaire, that on February 21, 1949 he was classified 3-A, a dependency classification, to which classification he made no objection; it further appears that on January 3, 1951 he was classified 4-E, which at that time was the conscientious objector classification, and he made no objection to that classification. It is noted that he was given the 4-E classification just mentioned after he had filled out and filed with the Board a New Information Sheet which was mailed to him on December 11, 1950; from this sheet it appears that at the time he was employed as a 'carrier, driver' for the Robert Dollar Lumber Company, having been employed there since July 15, 1948; he further stated among other things, that for 'religious reasons' he could not participate in any form of military service.

"On November 27, 1951 defendant was re-classified by the Board and placed in Class 1-A-O, which meant that he was liable for induction into the armed forces to serve in a noncombatant capacity. On December 8, 1951 he protested this classification, and stated that he desired to be classified as 1-O, which was the classification at that time assigned to conscientious objectors, and he requested a personal appearance before the Board. This was granted, and he appeared before the Board on January 16, was ques-

tioned by a Dr. Roach, presumably the chairman or a member of the Board, and was classified 1-O in accordance with his desires. In connection with his appearance before the Board he filed four affidavits executed by fellow Jehovah [sic] Witnesses to the effect that they believed that he was a conscientious objector.

"Now, shortly after he got his 1-O classification, which he wanted, he returned to his native home at Opal, near Mena, Arkansas, and was perfectly satisfied apparently with his classification until along in the fall of 1952 he found out that he was going to have to go into an occupation promoting the national health and welfare, as prescribed by law, which apparently he did not desire to do. In this connection the file reflects that on November 12, 1952, he wrote to Oregon State Selective Service Headquarters, and in the course of his letter he asked the question, 'Just when was this law past (sic) to draft labor.' On December 1, 1952 State Headquarters advised him of his obligation to engage in certain types of work for a period of 24 months by reason of the provisions of the Universal Military Training and Service Act of 1951, as amended.

"It was about two weeks after the letter last referred to was written that the defendant *for the first time* made the claim that he was a minister of the Gospel and was entitled to be classified as such; now, just as he had said nothing about being a minister when he was trying to get and retain a 1-O classification, so he said nothing about being conscientiously opposed to participating in war in any form while he was seeking to obtain a ministerial classification. The file reflects that an appeal was taken to the State Appeal Board by the State Director, which appeal was taken to protect the rights of the defendant, and the State Appeal Board unanimously affirmed the Local Board's classification; an appeal from the action of the State Appeal Board was taken by the State Director to the Presidential Appeal Board, and that Board put the defendant in Class 1-A.

"In my opinion, there can be no question that there was an adequate factual basis for the actions of the Local Board, the State Appeal Board, and the Presidential Appeal Board in refusing to classify the defendant as a minister. One of the requirements for ministerial exemption is that the registrant must preach and teach the principles of religion and administer the ordinances of public worship 'as his regular and customary vocation'; this the defendant's own evidence establishes that he did not do. It seems to me, and it must have appeared to the officials of the Selective Service System, that his activities in leading study groups and in engaging in door-to-door preaching were no different from the activities of other members of his sect. This defendant was a farmer and was also a Jehovah [sic] Witness. I recognize, of course, that all Jehovah [sic] Witnesses claim to be ministers, but the courts have consistently refused to recognize that claim as a basis for ministerial classification under the draft law.

"I am likewise convinced that the complete change of front effected by the defendant in abandoning his claim for a 1-O classification as soon as he found out that he was going to have to go into a certain line of work which he did not care for, and asserting a claim for a ministerial exemption to which it was found that he was not entitled, justified the Presidential Appeal Board in determining that neither of the claims made by him was honest or sincere and that he should be put in Class 1-A.

"Moreover, the answers given by the defendant to the questions propounded to him on the Special Form for Conscientious Objectors and other statements made by him are in certain instances vague and unsatisfactory, and to my mind they lack the genuineness and spontaniety [sic] which one would normally expect from a person, even though not highly educated, who held actual and sincere conscientious objections, based on personal religious training or belief, to participating in war, such objections extending not only to combat service but to noncombatant service as well; or at

least, said statements may have appeared insincere to the Presidential Board. To my mind said Board might well have felt that these statements, instead of being genuine and conscientious statements of personal belief, were merely artificial and stereotyped statements of hackneyed phrases and supposed proof texts which the defendant had heard or learned from others, or which he had copied from writings of his sect."

We have carefully examined the record and find that the trial judge's summary of the facts is so comprehensive as to make it unnecessary to make further reference to them. Manifestly, each case is dependent upon its particular facts. The trial court's decision, we think, finds further support in the decision of the Supreme Court in *Cox* v. *United States, supra.* In principle what is said in that case is persuasive in the instant case because of the marked similarity of the facts. In the course of the opinion in that case it is said, *inter alia:*

"As he made claim of conscientious objector classification only after he was reclassified 1-A from IV-F and still later claimed ministerial exemption, the board was justified in deciding from the available facts that Cox had not established his ministerial status. The board might have reasonably held that nothing less than definite evidence of his full devotion of his available time to religious leadership would suffice under these circumstances."

The evidence in support of the ministerial classification in the *Cox* case was, we think, quite as strong as in the instant case. Here the Selective Service Boards might well have inferred from the proven facts and circumstances that defendant's claim of a ministerial status was lacking in sincerity. We agree with the trial court that there was factual basis for the action of the Board in classifying defendant 1-A and in denying his claim of exemption from military service. The judgment appealed from is therefore affirmed.

APPENDIX B

JUDGMENT

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 15057—September Term, 1954.

Walker Dale Boston Bates, Appellant, vs. United States of America.	Appeal from the United States District Court for the Eastern District of Arkansas.

This Cause came on to be heard on the record from the United States District Court for the Eastern District of Arkansas, and was argued by Counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the judgment and sentence of the said District Court in this cause be, and the same is hereby, affirmed.

And it is further Ordered by this Court that the defendant in the said District Court, Walker Dale Boston Bates, do surrender himself to the custody of the United States Marshal for the Eastern District of Arkansas, in execution of the judgment and sentence imposed upon him, within thirty days from and after the date of the filing of the mandate of this Court in the said District Court.

October 19, 1954.

FILED
JAN 3 19
HAROLD B. WILLEY

Supreme Court of the United States

OCTOBER TERM, 1954

No. 450

WALKER DALE BOSTON BATES,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES

HAYDEN C. COVINGTON
124 Columbia Heights
Brooklyn 1, New York
Counsel for Petitioner

INDEX

Cases Cited

	PAGE
Affeldt v. United States 9th Cir., No. 13,941, Dec. 14, 1954	5
Blevins v. United States 9th Cir., No. 14,189, Nov. 26, 1954	4
Brown v. United States 9th Cir., Oct. 4, 1954, 216 F. 2d 258	4
Clark v. United States 9th Cir., No. 14,176, Dec. 3, 1954	5
Clementino v. United States 9th Cir., Sept. 27, 1954, 216 F. 2d 10	4
Cox v. Wedemeyer 9th Cir., 1951, 192 F. 2d 920	2
Dickinson v. United States 346 U. S. 389 (1953)	5
Franks v. United States 9th Cir., Oct. 4, 1954, 216 F. 2d 266	2, 3, 4
Goetz v. United States 9th Cir., Oct. 14, 1954, 216 F. 2d 270	4
Hinkle v. United States 9th Cir., Sept. 24, 1954, 216 F. 2d 8	4
Pitts v. United States 9th Cir., No. 14,164, Dec. 7, 1954	3, 5
Shepherd v. United States 9th Cir., No. 14,105, Dec. 13, 1954	3, 5
Sterrett v. United States 9th Cir., No. 12,901, Oct. 25, 1954	2
United States v. Hagaman 3rd Cir., 1954, 213 F. 2d 86	3, 6
United States v. Kezmes W. D. Pa., No. 14012 Cr., Oct. 22, 1954	6

PAGE

United States v. Taffs,
No. 576, October Term, 1953 5
Ypparila v. United States
10th Cir., No. 4937, Dec. 22, 1954 5

STATUTES AND REGULATIONS CITED

Regulations, Selective Service (32 C. F. R. § 1602 *et seq.*), Section 1626.26(a) 2

Supreme Court of the United States

OCTOBER TERM, 1954

No. 450

WALKER DALE BOSTON BATES,

Petitioner

v.

UNITED STATES OF AMERICA,

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PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES

MAY IT PLEASE THE COURT:

I.

The Government states that the court below expressly held that there was no basis in fact for the denial of the ministerial status, which claim was "lacking in sincerity." Then in a footnote it is stated: "There was no substance whatever to petitioner's claim" for classification as a minister of religion. This argument is entirely beside the point. In the Court of Appeals, as in the petition for writ of certiorari here, no challenge was made against the denial of

the ministerial status. The fact that the ministerial claim was baseless has no relationship whatever to the conscientious objector claim. It is immaterial and irrelevant to talk about the ministerial status.—See the memorandum for the United States, pages 9-10.

II.

It is stated that petitioner is in error in interpreting the decision of the Court of Appeals. It is said that the Court of Appeals did not hold that petitioner waived his claim by appealing. The position of the United States is patently inconsistent with the quotation that appears on page 10 of the memorandum. There the trial judge is quoted as saying that petitioner abandoned "his claim for 1-O classification" by "asserting a claim for a ministerial exemption."

The Government says the holding was that petitioner was not sincere because he claimed two classifications. This is in defiance of the regulations that authorize the petitioner to urge to the board all the claims that he felt entitled to make under the law before the board. (See Section 1626.26(a) of the Selective Service Regulations.) The argument of the Government is that if a registrant exercises the right under the regulations of pressing the ministerial claim and the conscientious objector claim and he fails on the ministerial claim, this is conclusive proof of insincerity as a conscientious objector. This argument is penalizing. There is no basis for it in the regulations. The position is contrary to the regulations and to the Selective Service practice. The position of the Government and the holding of the court below are in direct conflict with *Cox* v. *Wedemeyer*, 9th Cir., 1951, 192 F. 2d 920; *Sterrett* v. *United States*, No. 12,901, 9th Cir., Oct. 25, 1954; *Franks* v. *United States*, 9th Cir., Oct. 4, 1954, 216 F. 2d 266.

The position of the Government is a mere play upon words. To hold that there was factual basis for the denial of the conscientious objector claim, purely because the

petitioner shifted from the conscientious objector to the ministerial claim, is just another quibbling way of saying that petitioner waived his conscientious objector claim. (See the memorandum for the Government, pages 10-11.) This Court is bound to deal with substance and not engage in a game of semantics and make hair-splitting distinctions that are immaterial and irrelevant, such as those the Government, in its memorandum on pages 10-11, asks the Court to make.

III.

The Government takes the position that the claim of Bates was rejected by the national board because it was not based on "an abhorrence to war" but upon his desire "not to submit to any form of civil authority." This position of the Government is speculative in the extreme. The National Selective Service Appeal Board wrote no opinion. The speculation of the Government has been condemned in *United States* v. *Hagaman*, 3rd Cir., 1954, 213 F. 2d 86; *Shepherd* v. *United States*, No. 14,105, 9th Cir., Dec. 13, 1954. The argument of the Government that "this type of opposition to authority is not a basis for deferment under the statute" is rejected by *Franks* v. *United States*, 9th Cir., Oct. 4, 1954, 216 F. 2d 266. In that case the court said:

> "We are not unaware of the high probability that Franks, had he been classified I-A-O, would nevertheless have refused induction and ultimately found himself indicted in much the same manner as has happened here. Perhaps the local board and the hearing officer and the appeal board also had the feeling that they might as well classify the appellant as I-A for the reason that like other Jehovah's Witnesses he would probably refuse induction as a I-A-O.

"It is our view, however, that it was not for the local board, any more than it is for this court, to say that the registrant should not be placed in a certain classification merely because he did not want that classification or was seeking a lower class or would probably refuse to acquiesce in such a classification. At the time of the local board's classification, the Regulations, Title 32, Sec. 1623.2, provided as follows:

"'Upon undertaking to classify any registrant, unless grounds are established to place the registrant in Class I-C under the provisions of Sec. 1622.7 of this chapter, the registrant shall be classified in the lowest class for which he is determined to be eligible with Class I-A considered the highest Class and Class V-A considered the lowest class according to the following table: . . .' (In the table Class I-A-O is listed below Class I-A.)

"If some doctrine of waiver by the registrant were to be applied by the local board, then the mere fact that the registrant was claiming a lower classification than he was entitled to, could be used as a basis for classifying any registrant I-A. In *Cox* v. *Wedemeyer*, 9 cir., 192 F. 2d 920, we rejected and disapproved a similar suggestion in respect to classifications by an appeal board."

IV.

The decision of the court below is in direct conflict with *Clementino* v. *United States*, 9th Cir., Sept. 27, 1954, 216 F. 2d 10; *Hinkle* v. *United States*, 9th Cir., Sept. 24, 1954, 216 F. 2d 8; *Goetz* v. *United States*, 9th Cir., Oct. 14, 1954, 216 F. 2d 270; *Franks* v. *United States*, 9th Cir., Oct. 4, 1954, 216 F. 2d 266; *Brown* v. *United States*, 9th Cir., Oct. 4, 1954, 216 F. 2d 258; *Blevins* v. *United States*, No. 14,189, 9th Cir., Nov. 26, 1954; *Pitts* v. *United States*, No. 14,164, 9th Cir.,

Dec. 7, 1954; *Clark* v. *United States*, No. 14,176, 9th Cir., Dec. 3, 1954; *Affeldt* v. *United States*, No. 13,941, 9th Cir., Dec. 14, 1954; *Shepherd* v. *United States*, No. 14,105, 9th Cir., Dec. 13, 1954.

V.

Recently the United States Court of Appeals for the Tenth Circuit, in *Ypparila* v. *United States*, No. 4937, decided on December 22, 1954, in a factual situation identical to that in this case declared there was no basis in fact for the denial of the conscientious objector status. The Government made identically the same argument in that case as is made here. The decision of the court below is in direct conflict with the case of *Ypparila, supra.*

VI.

It is difficult to understand how the Government can argue to this Court, in the face of the record here, that Bates "lacked personal sincerity," when there is not one word in the draft board record to indicate such lack. The district court indulged in speculation contrary to *Dickinson* v. *United States*, 346 U. S. 389 (1953), when, without any finding by the National Selective Service Appeal Board, it declared that Bates lacked personal sincerity. Both the local board and the district appeal board found Bates to be sincere as a conscientious objector. There was nothing in the record to dispute this finding. The national board had nothing but the record before it. The speculation of the Government and of the district court and also of the court below is rejected in *Pitts* v. *United States*, No. 14,164, 9th Cir., Dec. 7, 1954; and *Shepherd* v. *United States*, No. 14,105, 9th Cir., Dec. 13, 1954, in factual situations not nearly so strong as those in this case.

In *United States* v. *Taffs*, No. 576, October Term, 1953, the Solicitor General told this Court that he did not present a question as to the sincerity of Taffs. The case of the

petitioner here is much stronger. In this case Bates has been found to be sincere by the local board and the district appeal board and he has not been found insincere by the National Selective Service Appeal Board. The national board's finding was not based upon a lack of sincerity, but was based upon the proposition that not one of Jehovah's Witnesses is a conscientious objector.—*United States* v. *Hagaman,* 3rd Cir., 1954, 213 F. 2d 86; *United States* v. *Kezmes,* W. D. Pa., No. 14012 Cr., Oct. 22, 1954.

CONCLUSION

It is not appropriate, as stated by the United States, to "defer action on this petition until the pending conscientious objector cases are decided." The reasons are explicitly stated by the petitioner at pages 15-16 of the petition. The National Selective Service Appeal Board persists in its illegal policy of holding that all of Jehovah's Witnesses are not conscientious objectors. This policy will not be corrected in the other cases because none of them involves a situation where the local board and the district appeal board gave the registrant a conscientious objector classification and the National Appeal Board reversed such classification and gave a *de novo* I-A classification without stating reasons. The issue involved here will not be determined in the pending conscientious objector cases.

WHEREFORE, for the reasons stated above and in the petition for writ of certiorari, the writ should be granted.

Respectfully submitted,

HAYDEN C. COVINGTON

124 Columbia Heights
Brooklyn 1, New York

Counsel for Petitioner

December, 1954.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	5
Argument	9

CITATIONS

Cases:

Cox v. *United States*, 332 U.S. 442	9
Dickinson v. *United States*, 346 U.S. 389	9
Sicurella v. *United States*, No. 250, O.T. 1954	11

Statutes and Regulations:

Universal Military Training and Service Act, 62 Stat. 604; 65 Stat. 75:	
Section 6(j) [50 U.S.C. App. 456(j)]	2
Section 12(a) [50 U.S.C. App. 462(a)]	3
Selective Service Regulations, Title 32 C.F.R. (1951 ed.):	
Section 1622.1	3
Section 1622.10	4
Section 1622.14 (E.O. 10420, 17 F. R. 11593, Dec. 19, 1952, 32 C.F.R. 1954 Supp.)	4
Section 1626.25 (E.O. 10363, 17 F. R. 5456, June 18, 1952, 32 C.F.R. 1954 Supp.)	4
Section 1626.26	5
Section 1627.1	5

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 450

WALKER DALE BOSTON BATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (R. 117-124) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 19, 1954 (R. 125). The petition for a writ of certiorari was filed on November 16, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was a basis in fact for the presidential appeal board of the Selective Service System to change petitioner's classification as a conscientious objector to that of a person available for military service.

STATUTES AND REGULATIONS INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 612, 622; 65 Stat. 75, 86:

Section 6(j) [50 U.S.C. App. 456(j)]:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in

lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * * .

Section 12(a) [50 U.S.C. App. 462(a)]:

Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * * .

Selective Service Regulations, Title 32 C.F.R. (1951 ed.), Section 1622.1 provides:

General principles of classification.

* * * * *

(c) * * * Each registrant will be considered as available for military service until his eligibility for deferment or exemption from military service is clearly established to the satisfaction of the local board. * * *

Section 1622.10:

Class I-A. Available for military service. In Class I-A shall be placed every registrant who has failed to establish to the satisfaction of the local board, subject to appeal hereinafter provided, that he is eligible for classification in another class.

Section 1622.14 (E.O. 10420, 17 F.R. 11593, Dec. 19, 1952, 32 C.F.R. 1954 Supp.):

Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest. (a) In Class I-O shall be placed every registrant who would have been classified in I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces.

* * * * *

Section 1626.25 (E.O. 10363, 17 F.R. 5456, June 18, 1952, 32 C.F.R. 1954 Supp.):

Special provisions when appeal involves claim that registrant is a conscientious objector. (a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

* * * * *

(2) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in both combatant and noncombatatant training and service in the armed forces, and the local board has classified the registrant in Class I-O, the appeal board shall proceed with the classification of the registrant. * * *

Section 1626.26:

Decision of appeal board. (a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant * * *.

Section 1627.1:

Who may appeal to the President from any determination of an appeal board. (a) When either the State Director of Selective Service or the Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may appeal to the President from any determination of an appeal board. He may take such an appeal at any time.

* * * * *

STATEMENT

Petitioner was convicted in the United States District Court for the Eastern District of Arkansas and sentenced to three years' imprisonment for

refusal to submit to induction into the armed forces (R. 1-3). On appeal, the judgment was unanimously affirmed (R. 4, 125).

Evidence for the government, most of which consisted of petitioner's selective service file (Gov. Ex. 1), may be summarized as follows:

Petitioner registered with Local Board No. 14 at Roseburg, Oregon, on September 15, 1948, at a time when he was about 20 years old (R. 19). In his classification questionnaire filed on October 3, 1948, petitioner did not fill in Series VI relating to ministers or ministry students, but he did sign Series XIV, stating that by reason of religious training and belief he was conscientiously opposed to participating in war in any form and requesting SSS Form 150 for conscientious objectors. In the questionnaire he stated that he worked a 40-hour week at $1.50 per hour for the Dollar Lumber Company. (R. 20-23.)

Petitioner returned SSS Form 150 to the local board on October 11, 1948, to request exemption as a conscientious objector, as a member of Jehovah's Witnesses. Petitioner stated that he attended Bible studies, that he had given lectures at some meetings, and had taken part in preaching from door to door. (R. 28-29.) In describing his religious creed in relation to participation in war he stated, "The Bible show [sic] that Jehovah God's people are not to participate in any organization of this world in order to keep our covenant or contract with him to do his will" (R. 31).

On March 21, 1949, petitioner was given a 3-A dependency classification (R. 23). He forwarded

to the local board on December 15, 1950, a new information sheet, in which he stated that "for religious reasons [he could] not participate in any form of military service" (R. 34-35). On January 3, 1951, he was given what was at that time a 4-E conscientious objector classification (R. 24).

On November 27, 1951, petitioner was classified I-A-O, which meant that he was liable for induction to serve in a noncombatant capacity (R. 24). In a letter dated December 6, 1951, petitioner objected to this classification, and an appointment was made for his personal appearance before the local board (R. 35-36). On January 16, 1952, petitioner appeared before the local board, was questioned by a member of the board, submitted four affidavits of Jehovah's Witnesses attesting to petitioner's sincerity as a conscientious objector, and was granted the I-O classification he desired (R. 5, 37-40). In a new information sheet required of I-O registrants dated February 23, 1952, petitioner stated that he was enrolled in a course of Theocratic Ministry conducted by Jehovah's Witnesses, under the direction of the Watchtower Bible & Tract Society (R. 40-42).

After petitioner had passed a physical examination (R. 51-54), SSS Form 151, "Application of Volunteer for Civilian Work", was forwarded to petitioner so that he could express his preference for the type of civilian work he wanted to do as a conscientious objector (R. 55-59, 70-72). In a letter dated November 12, 1952, to the Oregon State Headquarters petitioner stated that he was not qualified to work at any of the listed jobs and

inquired, "Just when was this law past [sic] to draft labor" (R. 60). The reply from State Headquarters dated December 1, 1952, explained how conscientious objectors were required to serve 24 months at civilian jobs related to national health and welfare in lieu of serving in the armed services, and again directed petitioner to list his preferences for work assignment (R. 61).

On December 9, 1952, petitioner wrote Local Board No. 14 stating that since he was an ordained minister he felt that he was entitled to a minister's classification; that he was enclosing affidavits of five people, including his father, to show his work as a minister (R. 64-70); and stating, "I am returning the SSS form no. 151 incomplete as I cannot except [sic] any civil job. As it would enterfear [sic] with my minister work" (R. 63-64). On December 19, 1952, the State Director appealed petitioner's I-O classification to the state appeal board (R. 25, 72-73). After petitioner's file was forwarded to Oregon State Headquarters, on January 8, 1953, the state board by a vote of 4 to 0 classified petitioner I-O (R. 25, 77-79).

At petitioner's request, since he did not feel that the information as to his ministerial status had been fully considered, his file was on January 27, 1953, forwarded for consideration by the presidential appeal board (R. 80-83). On May 15, 1953, after asking for, and receiving, additional information, the presidential appeal board, without giving specific reasons, classified petitioner I-A by a vote of 3 to 0 (R. 26, 93-94).

In a letter to Oregon State Headquarters dated June 16, 1953, petitioner requested reconsideration of his file and enclosed a certificate by the Watchtower Bible & Tract Society to the effect that he had been a duly ordained minister for Jehovah's Witnesses since January 17, 1943 (R. 99-101). Petitioner was informed by his local board that this information was in letters already in the file, and had been considered when his file was previously reviewed (R. 102-103).

ARGUMENT

The court below expressly held that the selective service boards were justified in inferring from the proven facts and circumstances that petitioner's claim of a *ministerial* status was lacking in sincerity (R. 124).[1] Presenting no challenge to this ruling in his petition for certiorari, petitioner

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[1] There was no substance whatever to petitioner's claim asserted in the court below that he should be classified IV-D as a minister of religion. This was substantially a reiteration of the position rejected by this Court in *Cox* v. *United States*, 332 U.S. 442, 444-450, that all members of Jehovah's Witnesses are ministers. Petitioner's file disclosed that he was only one of the numerous Jehovah's Witnesses who attend Bible studies, engage in religious study talks, and preach publicly and from house to house (R. 11-12, 29, 86-88, 100-101). He neither practiced these activities as a "vocation" (*Dickinson* v. *United States*, 346 U.S. 389, 395), nor was he in any sense a "leader" of a "religious faith" (*id.*, p. 394). His vocation was secular as a lumber worker and a farmer. Moreover, on October 3, 1948, he did not claim any minister classification in his original questionnaire (R. 21), even though much later on June 16, 1953, he was to claim that he had been a minister since January 17, 1943, when he was 15 years old (R. 99-100).

relies upon his contention that there was no basis in fact for the presidential board to reclassify him I-A after his I-O classification by the local and state boards (Pet. 11-12).

At the outset, it should be noted that petitioner is in error in interpreting the decision of the court below as holding that he had waived his conscientious objector claim by appealing and claiming a ministerial classification (Pet. 11). Petitioner's argument presumably stems from the District Court's statement in overruling his motion for an acquittal (R. 12): "I am likewise convinced that the complete change of front effected by the [petitioner] in abandoning his claim for 1-O classification as soon as he found out that he was going to have to go into a certain line of work which he did not care for, and asserting a claim for a ministerial exemption to which it was found that he was not entitled, justified the Presidential Appeal Board in determining that neither of the claims made by him was honest or sincere, and that he should be put in Class 1-A." However, this was not a holding by the District Court that petitioner had waived his claim to the I-O classification, but merely a recognition that petitioner's shift in position could support a finding of insincerity in regard to both the ministerial and the conscientious objector claims. Immediately after this statement, the District Court discussed petitioner's conscientious objector claim, and noted that his statements on the questionnaire were so "vague and unsatisfactory" that they lacked the genuineness to be expected from one

having sincere conscientious objections (R. 12). In according deference to the ruling of the District Court, the court below made no decision that petitioner had waived his conscientious objector claim by shifting to a ministerial claim, but rather agreed with the District Court "that there was factual basis for the action of the Board in classifying [petitioner] 1-A and in denying his claim of exemption from military service" (R. 124).

We think that, for the reasons set forth by both courts below, there is a basis in fact for the I-A classification. Certainly, this record indicates very clearly a factor present in many cases involving Jehovah's Witnesses, *i.e.,* that opposition to service stems less from an abhorrence to war than from a desire not to submit to any form of civil authority. Petitioner was content with a conscientious objector classification only as long as it resulted in complete exemption from service. It is the position of the government that this type of opposition to authority is not a basis for deferment under the statute.

However, the factor of opposition to governmental authority is one of the bases on which the Court of Appeals for the Seventh Circuit upheld a I-A classification in *Sicurella* v. *United States,* No. 250, O.T. 1954, now pending before this Court. Consequently, the decision to be rendered in *Sicurella* may materially assist in the proper disposition of the instant case. For that reason we suggest that, unless the Court determines that the judgments of the lower courts can be sustained on

the factual ground that petitioner lacked personal sincerity, in which case the petition should be denied, it would be appropriate to defer action on this petition until the pending conscientious objector cases are decided.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

DECEMBER, 1954.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 324980 749

MARCH 28, 1955.*

Decisions Per Curiam.

No. 450. BATES *v.* UNITED STATES. On petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit. *Per Curiam:* The petition for certiorari is granted. Petitioner's claim to exemption as a conscientious objector has been denied by the National Appeal Board without his Selective Service file ever having been referred to the Department of Justice for inquiry, hearing, and recommendation. The procedure prescribed by § 6 (j) of the Universal Military Training and Service Act, 62 Stat. 612, as amended, 50 U. S. C. App. § 456 (j), has not been complied with, and the judgment of conviction is accordingly reversed. *Hayden C. Covington* for petitioner. *Solicitor General Sobeloff, Assistant Attorney General Olney, Beatrice Rosenberg* and *Robert G. Maysack* for the United States. Reported below: 216 F. 2d 130.